

AN ORDINANCE **101818**

APPROVING THE IMPLEMENTATION OF THE RESIDENTIAL ENERGY ASSISTANCE PARTNERSHIP (REAP) UTILITY ASSISTANCE PROJECT FOR CALENDAR YEAR 2006; AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE AGREEMENT WITH REAP TO ALLOW THE CITY TO SUBCONTRACT WITH LOCAL NON-PROFIT AGENCIES; AUTHORIZING THE EXECUTION OF SAID SUBCONTRACTS FOR DISTRIBUTION OF REAP ASSISTANCE CREDITS TO CPS ENERGY RATE PAYERS; AND APPROVING THE ISSUANCE OF ASSISTANCE CREDITS UP TO \$450,000.00 FOR THE PERIOD JANUARY 1, 2006 THROUGH DECEMBER 31, 2006.

* * * * *

WHEREAS, the Residential Energy Assistance Partnership (REAP), Inc., which is a 501 (c)(3) Non-Profit Charitable Trust, was established in 2002 to provide utility relief to vulnerable low-income residents of the City of San Antonio (City) and Bexar County; and

WHEREAS, REAP, Inc. is financed by grants from CPS Energy (CPS), trust investment income and funds generated through fundraising activities; and

WHEREAS, pursuant to Ordinance No. 97665, City Council authorized the execution of a contract with REAP, Inc. which is automatically renewable on an annual basis; and

WHEREAS, this renewable agreement between REAP, Inc. and the City designates the City's Community Action Division of the Department of Community Initiatives (DCI) as the principal conduit for the distribution of REAP assistance credits to City residents; and

WHEREAS, it is the City Council's intention that the renewal of the existing agreement between REAP, Inc. and the City be approved by the City Council annually; and

WHEREAS, it is the City's understanding that REAP, Inc. will provide up to \$450,000.00 in utility assistance credits, which are available to DCI for distribution to eligible CPS ratepayers residing in the City of San Antonio during Calendar Year (CY) 2006; and

WHEREAS, DCI desires to use the services of various delegate agencies in order to provide additional outreach to potential REAP recipients to the City; and

WHEREAS, the public purpose of this agreement is to promote family, social and economic stability by providing temporary emergency assistance to low-income individuals and families living in the community; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The implementation of the Residential Energy Assistance Partnership (REAP) Utility Assistance Project for Calendar Year (CY) 2006, which provides for the distribution of up to \$450,000.00 in utility assistance credits to eligible CPS Energy (CPS) ratepayers living in San Antonio, is hereby approved for the period January 1, 2006 through December 31, 2006. A copy of the Agreement with REAP Inc. is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. The City Manager, or her designee, or the Director of the Department of Community Initiatives is authorized to execute an amendment to the agreement with REAP Inc. which will permit the City to contract with local non-profit agencies in order to distribute all or some of the REAP funds. A copy of said amendment, in substantially final form, is attached hereto and incorporated herein for all purposes as Attachment II.

SECTION 3. The City Manager, or her designee, or the Director of the Department of Community Initiatives is authorized to execute memoranda of agreement for the period January 1, 2006 through December 31, 2006 with various agencies selected by the Department of Community Initiatives in order to assist the City of San Antonio in the implementation of the plan under the Agreement with REAP Inc., which is set forth in Attachment I. A copy of said memorandum of agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as Attachment III.

SECTION 4. This ordinance shall become effective on and after December 25, 2005.

PASSED AND APPROVED this 15th day of December 2005.


M A Y O R

ATTEST 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

AGREEMENT

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager, and the Residential Energy Assistance Partnership, Inc. (hereinafter referred to as "REAP").

WHEREAS, REAP is a Texas non-profit corporation organized for IRC §501(c)(3) charitable purposes; and

WHEREAS, REAP's primary charitable purpose is to provide funds to help low-income individuals and families in Bexar County, Texas, pay their gas and electric utility bills; and

WHEREAS, the Department of Community Initiatives' (DCI) social service staff will serve as the principal conduit for the distribution of REAP assistance credits to City residents; and

WHEREAS, it is now the desire of the City and REAP to set forth their respective duties and responsibilities in connection with the distribution of REAP's assistance credits to eligible City Public Service ("CPS") ratepayers; and

WHEREAS, the public purpose of this Agreement is to promote family, social and economic stability by providing temporary emergency assistance to low income individuals and families living in the community; NOW THEREFORE:

The parties hereto severally and collectively agree and by the execution hereof are bound to the mutual obligations herein contained and the performance and accomplishment of the tasks hereafter described.

I. TERM

1.1 The initial term of this Agreement shall commence on January 1, 2003 and shall terminate December 31, 2003. Until terminated under section VII of this Agreement, this Agreement shall automatically be renewed for nine additional subsequent terms, each term consisting of the calendar year from January 1 to December 31, with the final such subsequent term ending December 31, 2012.

II. REAP RESPONSIBILITIES

2.1 It is agreed by REAP that for the term of this Agreement, it will provide to City Public Service residential customers residing within the City at least the following amount per year in assistance credits calculated as follows: \$500,000 minus REAP's annual administrative budget set by REAP's Board of Directors, multiplied by the percentage obtained by comparing the total number of CPS residential customers residing in the City to the total number of CPS residential customers residing in Bexar County (such percentage, the "City Percentage"). For example, if REAP's annual administrative budget is \$25,000, and 80% of CPS residential customers in Bexar County reside in the City limits, REAP will provide at least \$380,000 (80% X \$475,000) in assistance credits for City Public Service residential customers in the City. REAP will also provide assistance credits on an annual basis in the following amount to CPS residential customers residing within the City: the City Percentage multiplied by the total of the following two amounts: (1) Contributions to REAP made in the calendar year by CPS residential customers via CPS monthly bills; and (2) Net proceeds in the calendar year from other fund-raising activities of REAP, such as golf tournaments. However, no

assistance credits will be provided to the extent that REAP receives donations of funds specifically earmarked for endowment or other purposes.

2.2 REAP agrees to make charitable assistance credits to CPS ratepayers by coordinating the crediting of their accounts up to the maximum amount allowable in accordance with the current year Project WARM criteria.

2.3 It is understood and agreed by the parties to this Agreement that CPS ratepayers may only receive REAP assistance once per calendar year.

2.4 To the extent allowed by law, REAP agrees to maintain the confidentiality of any record directly related to or generated as a result of this Agreement in accordance with all local, State or Federal laws.

III. CITY RESPONSIBILITIES

3.1 The City agrees to identify and qualify CPS ratepayers living in the City who are eligible to receive REAP assistance in accordance with criteria established annually for Project WARM.

3.2 The City agrees to coordinate their REAP utility assistance operations with REAP. The City also agrees to coordinate its REAP efforts with the City's existing Project WARM program to ensure ratepayers do not receive assistance from both Project WARM and Project REAP in the same calendar year.

3.3 Without cost to REAP, the City will provide the supportive emergency services necessary to have REAP assistance credits distributed to eligible CPS ratepayers. In addition, the City, at no cost to REAP, will collect and maintain demographic information about each REAP eligible applicant that will be used to better tailor REAP services for low income and economically vulnerable CPS ratepayers. This information will be made available to REAP. The City will provide the information set forth herein to REAP at least on a quarterly basis and at other additional times when requested by REAP if City staff are available at those times to process the data. This information includes:

- a. Census Tract
- b. Employer
- c. Gender
- d. Age
- e. Number of Seniors in Household
- f. Ethnicity
- g. Education
- h. Other (i.e. No Health Insurance, Disabled, Veteran, Under Doctor's Care)
- i. Household Type (i.e. Single-Parent Female/Male, Two Parents, Single, Two Adults/No Children, Other)
- j. Household Size and number of persons in household over
- k. Average number of household members within census tract
- l. Housing (i.e. Tenant, Homeowner, Homeless, Other)
- m. If house, the approximate age of the house
- n. Whether home is single or multi-story
- o. Level of Household Income
- p. Median household income within census tract
- q. Zip Code

3.5 The City agrees to provide the following information to each REAP applicant:

- a. Information on CPS programs relating to senior citizens, critical care, conservation and weatherization.
- b. Low-cost or no-cost energy conservation tips.
- c. Other similar information provided by REAP.
- d. Information on the Home Eligible Loan Program (HELP).

REAP, at its expense, will provide the materials cited above to the City for distribution to each REAP applicant.

3.6 The City understands and agrees that REAP assistance credits may only be used for the purposes set forth in the REAP Articles of Incorporation and By-Laws. The City also understands and agrees that REAP assistance credits will not be available to pay for or reimburse the City for salaries, administrative or similar costs or for any other purpose REAP has not authorized.

IV. RETAIL COMPETITION

4.1 The parties to this Agreement acknowledge that REAP is receiving payments from CPS under a separate agreement ("CPS-REAP Agreement"). Notwithstanding any other provision of this Agreement to the contrary, in the event the City and CPS determine CPS will participate in retail competition at any time during the term of this Agreement, the City agrees to take any necessary actions to ensure payments made by CPS to REAP under the CPS-REAP Agreement will constitute a basis for reduction by CPS in the nonbypassable charge imposed on retail customers served by a municipally owned utility participating in retail competition to fund the System Benefit Fund, as described and provided in 39.903(c) of the Texas Utilities Code. In such event, the City agrees that the recipients of the benefits from REAP under this Agreement will conform to the qualification requirements for System Benefit Fund beneficiaries.

V. RECORDS

5.1 In order to assure the REAP Board that REAP assistance credits are being used for the charitable purposes authorized by the REAP Board, the City agrees to keep accurate and detailed records of the use of REAP assistance credits for customers within the City. At a minimum, these records will include the REAP applicant files and any electronic databases used to store and track REAP distributions. Hard copy files will be maintained at City field sites for one year and for an additional two years in other storage facilities. The City agrees to give the REAP Board full and immediate access to all the records cited above within two weeks of a request for a records review by the REAP Board.

VI. FUNDRAISING

6.1 The City will not, without the express written consent of the REAP Board, engage in fund raising activities relating to the charitable purposes of REAP. In addition, the City will not, without the express written consent of the REAP Board, use REAP's name or logo for any purpose other than those purposes directly related to providing CPS ratepayers with information regarding the REAP utility assistance programs.

VII. TERMINATION

7.1 This Agreement may be terminated by either party giving written notice of termination to the other party at least 30 days in advance of the effective date of such termination.

VIII. TEXAS LAW TO APPLY

8.1 This Agreement shall be governed in accordance with the laws of the State of Texas, and all obligation of the parties created under this Agreement are performable in Bexar County, Texas.

IX. NOTICES

9.1 For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

Director

Community Initiatives Department
115 Plaza de Armas, Suite 210
San Antonio, Texas 78205

REAP:

Secretary, Board of Directors
REAP, Inc.
c/o CEO and General Manager
City Public Service
145 Navarro
San Antonio, Texas 78205

Notice of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change.

X. PARTIES BOUND

10.1 THIS Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

IX. GENDER

11.1 Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XII. RELATIONSHIP OF PARTIES

12.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

XIII. CAPTIONS

13.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XIV. SEVERABILITY

14.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future laws during the term of this Agreement, it is the intention of the parties hereto that the remainder of the Agreement shall not be affected thereby, and that in lieu of each clause or provision of the Agreement that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in the terms and content, to be legal, valid, and enforceable under the Agreement.

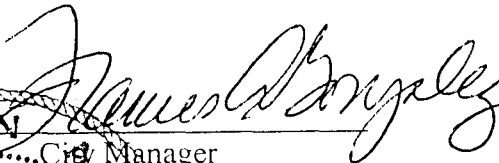
XV. ENTIRE AGREEMENT

15.1 This Agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

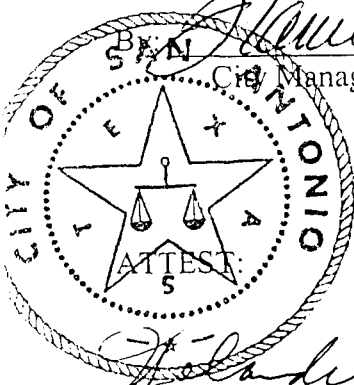
IN WITNESS OF WHICH this Agreement has been executed on this the 14th day of December, 2003.

CITY OF SAN ANTONIO

RESIDENTIAL ENERGY
ASSISTANCE PARTNERSHIP, INC

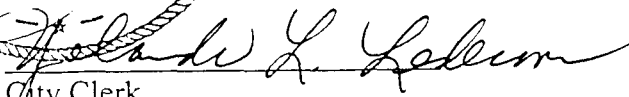


City Manager


ATTEST:

By: 

Secretary, Board of Directors



City Clerk

APPROVED AS TO FORM:



City Attorney

**AMENDMENT #1 TO AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO
AND
RESIDENTIAL ENERGY ASSISTANCE PARTNERSHIP, INC.**

This amendment of the Agreement ("this Amendment") is entered into by and between the City of San Antonio, a Texas Municipal Corporation, (hereinafter referred to as "City") acting by and through its designated representative, the Director of the Department of Community Initiatives, pursuant to Ordinance No. _____ passed and approved on _____, and the Residential Energy Assistance Partnership, Inc (hereinafter referred to as "REAP").

WHEREAS, the REAP presently contracts with the City to provide outreach and eligibility services for the utility assistance pursuant to an agreement (hereinafter referred to as "the Agreement") that was executed on December 10, 2003 pursuant to Ordinance No. 97665; and

WHEREAS, the City desires to subcontract its portion of the services to local non-profit agencies for distribution of REAP assistance credits to CPS ratepayers; and

WHEREAS, the City and REAP now desire to amend the Agreement;

NOW THEREFORE:

REAP and City agree to amend the Agreement as follows:

1. At its sole discretion, the City may contract with local non-profit agencies to distribute all or some of the REAP funds. City will ensure that these agencies adhere to all REAP guidelines. No administrative or other costs will be charged by these agencies to CPS or REAP.

Executed this the _____ day of _____, _____.

CITY OF SAN ANTONIO:

REAP

Dennis J. Campa, Director
Department of Community Initiatives

APPROVED AS TO FORM:

Assistant City Attorney

MEMORANDUM OF AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO
AND
NAME OF AGENCY

This Memorandum of Agreement is entered into by and between the City of San Antonio, (hereinafter referred to as the CITY), a Texas municipal corporation, acting by and through its Director of Community Initiatives as authorized by City Council on _____, pursuant to Ordinance No. _____, and the NAME OF AGENCY (hereinafter referred to as the AGENCY).

WHEREAS the CITY, and the AGENCY (hereinafter referred to as "the Parties") are dedicated to providing assistance to low-income CPS Energy (hereinafter referred to as "CPS") ratepayers; and

WHEREAS each of the Parties wish to promote the public purpose of providing a community safety net for individuals in need of emergency assistance;

NOW THEREFORE:

IT IS HEREBY AGREED that the Parties participate in determining eligibility for Project Residential Energy Assistance Partnership (Project REAP) established by CPS for the purpose of providing utility assistance credits to eligible CPS ratepayers. Such participation shall be defined in accordance with the following parameters and limitations:

1. TERM.

This MEMORANDUM OF AGREEMENT shall commence on the date of execution and shall terminate on DATE unless earlier termination or extension shall occur pursuant to any provision hereof.

2. CONSIDERATION.

AGENCY and CITY agree that the contract mutually benefits the parties and as such, no administrative or other costs shall be charged by AGENCY to the CITY, CPS, or Project REAP. AGENCY agrees to provide the CITY with recommended eligible applicants to receive assistance credits in an amount not to exceed \$_____ for the agreement period.

3. PROGRAM GUIDELINES.

The intent of Project REAP is to provide assistance to eligible CPS ratepayers in the San Antonio area. Assistance is determined by eligibility criteria that include demonstrated need, priority category, household income, household resource management, co-payment requirement, and the ratepayer's CPS payment history. Applicants must be residents of the CPS service area and be a CPS ratepayer.

4. SCOPE OF WORK.

4.1 Outreach Activities

AGENCY shall outreach eligible CPS Ratepayers through its program in the community.

4.2 Eligibility and Certification

AGENCY shall determine the eligibility of applicants based on criteria in Section 4.2.2 of this agreement, prioritizing those with the greatest need. AGENCY shall complete a Community Action Intake Form and a Project WARM / REAP Authorization form for each applicant as directed by the CITY through City's Department of Community Initiatives, Community Action Division (hereinafter referred to as (CAD)). AGENCY shall provide CITY with the names of those eligible, together with corresponding assistance amounts in accordance with Department Directives set forth by the CITY's Department of Community Initiatives for Project REAP.

4.2.2 Eligibility Guidelines

A. Income

Applicants must have a total household income at or below 125% of the Federal Poverty Level (FPL) at the time of application. As of October 1, 2005, the 125% FPL has been established as follows:

FAMILY SIZE	YEARLY INCOME *
1	\$11,962
2	16,037
3	20,112
4	24,187
5	28,262
6	32,337
7	36,412
8	40,487

* For family units with more than eight (8) members, add \$4,075.00 for each additional family member to the guidelines. Household income may be adjusted downward per existing CAD policies to take into consideration recurring medical prescription cost for seniors.

B. Resources

An applicant household must demonstrate that a CPS payment was made from its total household resources within the last 60 days. The project will count as total resources all income that supports the household. Total resources will reflect the following as income: wages, benefits (i.e. SS, SSI, TANF, food stamps, etc.), rental/utility subsidies, pensions, family assistance, grants, and workmen's compensation. The applicant household must demonstrate that it has managed its resources in an appropriate manner and has exhausted all other means to make payment on its CPS account.

C. Priority

Priority will be given to eligible applicants experiencing a financial or other hardship and demonstrating an inability to make the required payment on their CPS bill. Eligible, priority applicants include the elderly (age 60 years and older), those identified as medical Critical Care ratepayers by CPS, ratepayers that have a documented disability, and families with small children (age three years and younger). All of these priority groups must also meet the income eligibility criteria.

D. Co-Payment

A co-payment will be required from each applicant household that is assisted by this project. The co-payment will be a minimum of \$5.00.

E. Limitation of Payment

Each applicant household may be eligible for assistance not to exceed \$____. The exact amount of assistance will be based on the household's demonstrated need, effective utilization of the total household resources, and the applicant's co-payment. Normally, applicants are eligible for assistance once per year and may not receive utility assistance from Project REAP (Residential Energy Assistance Partnership) in the same year assistance is received from Project REAP, unless authorized by the City. If funds are available, and the household crisis continues, additional assistance within the same calendar year may be provided with the approval of CAD management staff.

F. Allowable Assistance

Only credits to CPS for past due or current bills related to the utilization or procurement of energy can be provided with Project REAP funds. These funds cannot be used to pay for illegal usage, returned check fees, reconnection fees, or deposits. The only exception is that deposits may be paid for applicants who are homeless and in the process of establishing permanent housing. In this case, a maximum of \$150.00 can be applied towards their CPS deposit.

G. Renters

Project REAP may not serve renters who do not pay their CPS bill separate from their rent. For those renters who pay their CPS bill separate from the rent, the provisions set forth in this plan will apply. For the purpose of this project, renters receiving assistance under the H.U.D. Section 8 Program do not qualify for assistance if they receive a Housing Assistance Utility Payment in addition to their rent subsidy.

H. Waivers

In cases of extreme hardship or emergencies, the AGENCY may grant special waivers for any of the eligibility criteria or assistance limits. A waiver may not be granted for the requirement that the applicant be a CPS ratepayer.

I. CPS Ratepayer

The applicant must have a CPS statement in their name or in the name of the head of household. If an applicant's bill is not in the applicant's name or the head of household's name, the applicant must initiate a name change on the CPS account prior to services being rendered. In the event that a household is unable to accomplish this due to a legitimate financial hardship, AGENCY staff will provide budgeting assistance and inform the client of procedures on establishing a payment plan to relieve any ratepayer arrears owed CPS.

4.3 Appeals Process

In order to provide equitable services to all applicants, those who have been denied assistance will have the right to be informed in writing of the reasons for the denial of requested services; the right of appeal to the AGENCY management, then, to the CAD management in succession; and, the right to a prompt resolution of the appeal. In all appeals, the determination by the Director of the Department of Community Initiatives will be final.

5. DOCUMENTATION

AGENCY shall maintain the Community Action Intake Form, the Project WARM/REAP Authorization form, a copy of the applicant's delinquent CPS bill, proof of eligibility, proof of co-payment, and any waivers requested or granted in a file that shall be made available, upon request, to CPS, the CITY or its representatives. Immediately upon termination of this agreement, and if no subsequent agreement between the parties shall continue this project, AGENCY shall provide all applicant and project records to the CITY.

6. REPORTING REQUIREMENTS

AGENCY shall provide to the CITY on the ____ day of each month, a monthly report containing the following data:

- (1) Total number of households and household members assisted
- (2) Summary of assistance by Council District
- (3) Households served by priority category
- (4) Total funds credited

7. CONFIDENTIAL INFORMATION

The PARTIES agree to maintain the confidentiality of any record directly related to or generated as a result of this agreement in accordance with all Local, State, and Federal Laws. AGENCY understands that work provided through this agreement is subject to the Public Information Act, Government Code Section 552.021. Therefore, if AGENCY receives inquiries regarding documents within its possession pursuant to this agreement, AGENCY shall within twenty-four (24) hours of receiving the request forward such requests to CITY for disposition.

8. INDEMNITY

AGENCY AGREES TO COMPLY WITH THE FOLLOWING INDEMNITY PROVISION:

- (A) AGENCY covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to AGENCY's activities under this Contract, including any acts or omissions of AGENCY, any agent, officer, director, representative, employee, consultant or subcontractor of AGENCY, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED**

OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. AGENCY shall promptly advise the CITY in writing of any claim or demand against the CITY or AGENCY known to AGENCY related to or arising out of AGENCY's activities under this Contract and shall see to the investigation of and defense of such claim or demand at AGENCY's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving AGENCY of any of its obligations under this paragraph.

- (B) It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Article is an INDEMNITY extended by AGENCY to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. AGENCY further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

9. TERMINATION BY NOTICE

This MEMORANDUM OF AGREEMENT may be terminated by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.

10. TERMINATION FOR CAUSE

Should either party default in the performance of any of the terms or conditions of this MEMORANDUM OF AGREEMENT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this MEMORANDUM OF AGREEMENT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.

11. TERMINATION BY LAW

If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this MEMORANDUM OF AGREEMENT shall automatically terminate as of the effective date of such prohibition.

12. CONFLICT OF INTEREST

12.1 AGENCY acknowledges that it is informed that the Charter of the CITY of San Antonio and its Ethics Code prohibit a City Officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any CITY Agency such as CITY owned utilities. An officer or employee has "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individuals or entities is party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of this business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

12.2 Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. Contractor further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

13. NOTICES

For purposes of this agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City of San Antonio
Department of Community Initiatives
Community Action Division
115 Plaza de Armas Ste. 210
San Antonio, TX 78205

AGENCY
ADDRESS

14. AMENDMENT

Except where the terms of this MEMORANDUM OF AGREEMENT expressly provide otherwise, any amendment to this MEMORANDUM OF AGREEMENT shall not be binding on the parties unless such amendment be in writing, executed by all the Parties and dated subsequent to the date hereof.

15. COMPLIANCE WITH LAWS AND REGULATIONS

It is understood and agreed by the Parties hereto, that changes in local, State and Federal rules, regulations or laws applicable hereto, including the Project REAP Plan, may occur during the term of this MEMORANDUM OF AGREEMENT and that any such changes shall be automatically incorporated into this MEMORANDUM OF AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The Parties expressly agree to comply with all applicable federal, state, and local laws.

16. INDEPENDENT CONTRACTOR

The Parties agree that they will provide services under this Memorandum of Agreement as independent parties. The Parties to this Memorandum of Agreement further agree that they have no authority to bind the others or to hold out to third parties that it has authority to bind the others; and nothing herein contained shall be deemed or construed by the Parties hereto or any third party as creating the relationship of employer-employee, principal-agent, partners or joint venturers. Furthermore, there is no intention on the part of the Parties hereto to create or otherwise form a joint enterprise under or pursuant to this Memorandum of Agreement. The Parties to this Memorandum of Agreement do not have a pecuniary purpose, let alone a common one. The purpose of this Agreement is to further the public good, not to gain a profit. The Parties do not have an equal right of control over any aspect of the Memorandum of Agreement. Each of the Parties to this Memorandum of Agreement have separate and independent duties and obligations over which they have control.

17. TEXAS LAW TO APPLY

This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created herewith are performable in the State of Texas, County of Bexar.

18. CAPTIONS

The captions contained in this agreement are for convenience of reference only, and in

no way limit or enlarge the terms or conditions of this agreement.

This MEMORANDUM OF AGREEMENT, together with its authorizing ordinance and exhibits, if any, shall constitute the full and final agreement between the parties hereto.

Agreed to by and between the below parties on this ____ day of _____, ____.

Dennis J Campa
Director, Department of Community Initiatives
City of San Antonio

AGENCY